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COURT OF APPEALS  
CLERK'S OFFICE, COCHISE COUNTY

NANCY SOSA

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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
11 IN AND FOR THE COUNTY OF COCHISE

12 NANCY SOSA, a single person,

)

13 Plaintiff,

)

Case No.

14 CV201800675

15 v.

)

16 COMPLAINT

(Tort-Non Motor Vehicle)

17 MARSHAL ROBERT RANDALL, in his official  
18 capacity as the Marshal of the City of  
19 Tombstone, Arizona; CITY OF TOMBSTONE,  
20 ARIZONA, a municipal corporation; ROBERT  
21 RANDALL and JANE DOE RANDALL,  
22 individually and as husband and wife; JANE DOES  
23 1-10; CORPORATIONS ABC; PARTNERSHIPS  
24 XYZ; ASSOCIATIONS MNO; and GOVERN-  
25 MENTAL ENTITIES RST,

DIV. 3

26 Defendants.)

Hon.

27 COMES NOW the Plaintiff, NANCY SOSA, a single person, by and through her  
28 attorneys, BOROWIEC & BOROWIEC, P.C., and for her Complaint against the Defendants  
herein, alleges and shows to the Court as follows:

GENERAL ALLEGATIONS

I.

The Plaintiff, NANCY SOSA, was at all material times set forth herein a resident of the  
County of Cochise, State of Arizona.

II.

That, upon information and belief, the Defendant, MARSHAL ROBERT RANDALL, is  
and was, at all material times, a resident of the County of Cochise, State of Arizona; that upon

information and belief, ROBERT RANDALL, as an individual, and under color of authority as  
1 the Marshal for the City of Tombstone, acted intentionally and without just cause, as set forth  
2 below; that, where applicable, the Defendants, and each of them, were, at all material times set  
3 forth herein, acting for, in the furtherance of, and on behalf of their respective marital  
4 communities; that, upon information and belief, the Defendant CITY OF TOMBSTONE,  
5 ARIZONA (TOMBSTONE), is and was at all material times set forth herein a municipality of  
6 the State of Arizona, County of Cochise; that Defendant MARSHAL ROBERT RANDALL  
7 (RANDALL), was at all material times set forth herein in the course and scope of his  
8 employment with Defendant TOMBSTONE as the Marshal of the Tombstone Marshal's Office,  
9 and the titular and actual head of said agency of the Defendant TOMBSTONE; that ROBERT  
10 RANDALL is named individually herein in case it is alleged that he was acting outside the  
11 course and scope of his employment with the Defendant TOMBSTONE, in which instance he  
12 would be individually liable to the Plaintiff; that Defendant TOMBSTONE is therefore liable for  
13 the acts, errors and/or omissions committed by Defendant RANDALL based upon application of  
14 the doctrine of *respondeat superior*; where applicable, that where otherwise applicable, or  
15 alleged, TOMBSTONE is liable as a result of its own actions or inactions as set forth herein  
16 below.

### III.

That the amount in controversy herein meets the threshold necessary to vest jurisdiction  
17 in the Superior Court of the State of Arizona, in and for the County of Cochise.  
18

### IV.

That the Defendants, RANDALL and TOMBSTONE, caused the acts, events, and/or  
20 occurrences of which the Plaintiff, NANCY SOSA, presently complains in the County of  
21 Cochise, State of Arizona; that venue is thereby proper in the Superior Court of the State of  
22 Arizona, in and for the County of Cochise.  
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### V.

That the true names and capacities of the alias defendants are presently unknown to the  
24 Plaintiff and Plaintiff reserves the right to amend his Complaint and its caption to reflect the alias  
25 defendants' correct names and capacities, should the same be discovered.  
26

### VI.

On or about November 29, 2017, RANDALL, as Marshall of Defendant TOMBSTONE, applied for a search warrant through Cochise County Justice Court 1 alleging that the Plaintiff had in her possession four items belonging to the City of Tombstone, and which were allegedly held in her storage unit #9 at Tombstone RV & Mini Storage, 66 South 11<sup>th</sup> Street, in Tombstone, Arizona; that those items listed were: 1) the original City Charter for the City of Tombstone; 2) original City Ordinances for the City of Tombstone; 3) Original City Resolutions for the City of Tombstone; and 4) the Original City Minutes of the City of Tombstone. (See Exhibit 1, warrant application, and attachments.) Further, the Original City Charter is in the Polly Rosenbaum Building for the Arizona State Library and Archives in Phoenix, Arizona and was never in the possession of the City of Tombstone, but rather kept by the Territorial Legislature after its enactment in 1881, and there never was a second copy of this document. Finally, all of the other documents listed in the Warrant were never in the possession of the Plaintiff, but were kept by the City of Tombstone and remain in its possession. Finally, the property listed as being seized bears no resemblance to the items listed in the warrant and application therefor, but were rather solely the Plaintiff's own property, some of which was acquired by her during her employment with the City of Tombstone, which ended in 2014, but it was not acquired in her capacity as an employee, but rather as an independent historical researcher, and all such copies or items never belonged to the City of Tombstone.

COUNT I  
ABUSE OF PROCESS  
VII.

That the Defendants, and specifically RANDALL, acting in the course and scope of his employment with the City of Tombstone, and otherwise personally, acting with negligence, recklessness, and intentionally, engaged in an abuse of process relative to the Plaintiff SOSA in the use of the judicial process by applying for and getting the warrant from a court and seizing the personal property of SOSA, which was unrelated to that listed in the warrant, all of which was done for an ulterior purpose not proper in the regular conduct of the proceedings, that is, to humiliate, embarrass, harass, bully, and cause mental anguish to the Plaintiff, without a proper basis in law or fact.

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**VIII.**

5 That the acts of said Defendants were negligent, reckless, willful and wanton, and  
6 intentional acts, which have caused the Plaintiff to endure pain and suffering all to her detriment  
7 in an amount to be established at the time of the trial of this matter.  
8

IX.

10 As a direct and proximate result of the actions of the Defendants as set forth herein, the  
11 Plaintiff has experienced a loss of enjoyment of life, fear of police officers acting without just  
12 cause, emotional upset, fatigue, emotional distress, nervousness, anxiety, and pain and suffering,  
13 all to her detriment, in an amount to be determined by the trier of fact in this matter.  
14

15 **COUNT II**

16 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

17 **X.**

18 The Defendants, and specifically RANDALL, acting in the course and scope of his  
19 employment with the City of Tombstone, and otherwise personally, acting with recklessness, and  
20 intentionally, by applying for and getting the warrant from a court and seizing SOSA'S personal  
21 property, which was unrelated to that listed in the warrant, caused the Plaintiff to incur severe  
22 and grievous mental and emotional suffering, fright, anguish, shock, nervousness and anxiety, as  
23 manifested by physical symptoms of shaking, nausea, headaches, fatigue, an exaggerated startle  
24 reflex, and sleeplessness.  
25

26 **XI.**

27 That the acts of said Defendants were reckless, willful and wanton, and intentional acts,  
28 which have caused the Plaintiff to endure pain and suffering all to her detriment in an amount to  
be established at the time of the trial of this matter.  
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30 **XII.**

31 As a direct and proximate result of the actions of the Defendant as set forth herein, the  
32 Plaintiff has experienced a loss of enjoyment of life, fear of police officers acting without just  
33 cause, emotional upset, fatigue, emotional distress, nervousness, anxiety, and pain and suffering,  
34 all to her detriment, in an amount to be compensated by a determination by the trier of fact in this  
35 matter.  
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**COUNT III**  
**NEGLIGENCE - FAILURE TO SUPERVISE**

**XIII.**

That the Defendant TOMBSTONE knew, or should have known, that the actions of Marshall RANDALL in the instance complained of herein, were questionable, smacked of severely aggressive and unlawful actions on the part of the Marshall in attempting to enforce the will and/or laws of the City of Tombstone and State of Arizona; that TOMBSTONE was aware that RANDALL would take direction from the Mayor of the City of Tombstone, and/or act on his own with disregard for the laws of the State of Arizona, and the City Code of the City of Tombstone, in order to enforce the Mayor's will, or RANDALL'S own will, and for purposes unrelated to the actual and necessary enforcement of any laws of the City of Tombstone or the State of Arizona, and in this instance to harass, humiliate, embarrass, bully, and cause mental anguish to the Plaintiff, without a proper basis in law or fact, by the use of the offices of the City of Tombstone, especially the Marshall's Office, to accomplish said harms to the Plaintiff.

**XIV.**

That the acts of said Defendants were negligent, reckless, willful and wanton, and intentional acts, which have caused the Plaintiff to endure pain and suffering all to her detriment in an amount to be established at the time of the trial of this matter.

**XV.**

As a direct and proximate result of the actions of the Defendant as set forth herein, the Plaintiff has experienced a loss of enjoyment of life, fear of police officers acting without just cause, emotional upset, fatigue, emotional distress, nervousness, anxiety, and pain and suffering, all to her detriment, and a deprivation of her personal property, in an amount to be compensated by a determination by the trier of fact in this matter.

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**COUNT IV**  
**CONVERSION**

**XVI.**

That the acts of the Defendants, and specifically RANDALL, acting in the course and scope of his employment with the City of Tombstone, and otherwise personally, and acting with negligence, recklessness, and intentionally, deprived the Plaintiff of her personal property and

thus converted said personal property for the use and possession RANDALL, and TOMBSTONE; further, that said property has not yet been returned to her.

XVII.

That the acts of said Defendants were negligent, reckless, willful and wanton, and intentional acts, which have caused the Plaintiff to endure deprivation of her personal property all to her detriment in an amount to be established at the time of the trial of this matter.

XVIII.

As a direct and proximate result of the actions of the Defendants as set forth herein, the Plaintiff has experienced a loss of enjoyment of life, fear of police officers acting without just cause, emotional upset, fatigue, emotional distress, nervousness, anxiety, and pain and suffering, all to her detriment, and a deprivation of her personal property, in an amount to be compensated by a determination by the trier of fact in this matter; further, that the Plaintiff is also entitled to have all of her personal property returned to her which was unlawfully seized and converted by the Defendants herein.

COUNT V

RELIEF PURSUANT TO A.R.S. §13-3922  
XIX.

That the Plaintiff filed a Motion in Cochise County Justice Court Precinct 1, the Court that issued the warrant, seeking the return of her property in that Motion and pursuant to A.R.S. §13-3922, and the parties thereto stipulated to continue that action and also to join that action with this action in the Cochise County Superior Court, and the Plaintiff seeks such relief herein; that the Defendants, and specifically RANDALL, acting in the course and scope of his employment with the City of Tombstone, and otherwise personally, acting with negligence, recklessness, and intentionally, procured the warrant at issue and seized the personal property of the Plaintiff, none of which was listed in the warrant; further, that four specific items were sought in the warrant, none of which the Plaintiff had in her possession.

XX.

That A.R.S. §13-3922 provides that if the property taken is not the same as that described in the warrant, and is not within A.R.S. §13-3916(C), (D) or (E), and is not within A.R.S. §13-3925(B) or (C), or if probable cause does not exist to believe that the items are subject to seizure,

then the magistrate (court) shall cause the property taken to be returned to the person from whom it was taken.

XXI.

That the property taken by the Defendants, and specifically RANDALL, acting in the course and scope of his employment with the City of Tombstone, and otherwise personally, seized personal property of the Plaintiff which was not within the legal parameters for seizure based on the warrant issued, and there existed no probable cause to believe the property could be seized, then the Plaintiff is thus entitled to the return of her personal property forthwith.

COUNT VI.

**DEPRIVATION OF CIVIL RIGHTS UNDER COLOR OF  
LAW PURSUANT TO 42 U.S.C. § 1983**

XXII.

Defendants RANDALL, acting under color of law, and by the use of law enforcement officials employed by the City of Tombstone, namely RANDALL and other deputy marshals, deprived the Plaintiff of her civil rights under color of State law, as in depriving the Plaintiff of her due process, equal protection and property interests as guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

XXIII.

That the Defendants, in procuring the warrant and acting on it without a lawful reason, basis in fact or probable cause, violated the Plaintiff's civil rights by depriving her of due process, by infringing her rights to her personal property, and thus depriving her of her property interests and equal protection interests pursuant to the Fourteenth Amendment to the Constitution of the United States of America; that said acts were done under color of State law, by a government actor, namely RANDALL as the Marshal of the City of Tombstone, and TOMBSTONE, and RANDALL, as a private individual, acting in concert with said named actors, again under color of State law; further that TOMBSTONE has promulgated a policy or established a custom which has allowed the Mayor of the City of Tombstone, and other officials of the City of Tombstone, to act with impunity in directing RANDALL, and allowing RANDALL of his own volition, to enforce claimed violations of State law or City Code of TOMBSTONE in order to harass, humiliate, embarrass, bully, and cause mental anguish to the Plaintiff and to deprive the Plaintiff of her personal property the Plaintiff all in violation of his

civil rights under the Constitution of the United States of America, and the Fourteenth Amendment thereto.

XXIV.

That the acts of said Defendants were negligent, reckless, wilful and wanton, and intentional acts, which have caused the Plaintiff to endure pain and suffering all to her detriment in an amount to be established at the time of the trial of this matter.

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As a direct and proximate result of the actions of the Defendant as set forth herein, the Plaintiff has experienced a loss of enjoyment of life, fear of police officers coming to his house without just cause, emotional upset, fatigue, emotional distress, nervousness, anxiety, and pain and suffering, all to her detriment, in an amount to be compensated by a determination by the trier of fact in this matter.

XXVI.

That in Counts I through VI set forth herein above, the Plaintiff is entitled to an award of his reasonable and necessary costs incurred in the prosecution of the said Counts I through VIII.

**A TRIAL BY JURY IS HEREBY DEMANDED**

**WHEREFORE**, Plaintiff respectfully requests that the Court enter orders and findings as follows:

1. That the Court find in favor of the Plaintiff and against the Defendants on Count I of the Plaintiff's Complaint, and that this Court award the Plaintiff all such damages as are determined by the trier of fact.
2. That the Court find in favor of the Plaintiff and against the Defendants on Count II of the Plaintiff's Complaint, and that this Court award the Plaintiff all such damages as are determined by the trier of fact.
3. That the Court find in favor of the Plaintiff and against the Defendants on Count III of the Plaintiff's Complaint, and that this Court award the Plaintiff all such damages as are determined by the trier of fact.

4. That the Court find in favor of the Plaintiff and against the Defendants on Count IV of the Plaintiff's Complaint, and that this Court award the Plaintiff all such damages as are determined by the trier of fact, to include ordering the return of all of the personal property or property seized.
5. That the Court find in favor of the Plaintiff and against the Defendants on Count V of the Plaintiff's Complaint, and that this Court order the immediate return of all property seized by the Defendants.
6. That the Court find in favor of the Plaintiff and against the Defendants on Count VI of the Plaintiff's Complaint, and that this Court award the Plaintiff all such damages as are determined by the trier of fact.
7. That the Court award the Plaintiff his reasonable and necessary costs incurred in the prosecution of Counts I through VIII of his Complaint.
8. For such other and further relief as the Court deems just.

DATED this 29<sup>th</sup> day of November, 2018.

## **BOROWIEC & BROWIEC, P.C.**

By:

~~Joel P. Borowiec  
Attorneys for Plaintiff~~

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## VERIFICATION

STATE OF ARIZONA )  
                      )ss.  
County of Cochise )

NANCY SOSA, being first duly sworn, upon her oath deposes and states as follows: That she is the Plaintiff in the above-captioned action; that she has read the foregoing Complaint, knows the contents thereof, and that the matters and things alleged therein are true in substance and in fact, except for those matters alleged upon information and belief, and as to those allegations, she believes them to be true.

  
NANCY SOSA

SUBSCRIBED AND SWORN to before me this 29th day of November, 2018.

  
NOTARY PUBLIC

My Commission Expires: 5 / 9 / 21

